



CITY COUNCIL GOVERNANCE

Improving the Openness, Effectiveness, and Independence
of the City Council through Reforms

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A Report by

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DRAFT: For Public Discussion

Purpose and Process of Study

As the City of San Diego continues its transition to the “Strong Mayor” form of government, it is imperative that the City Council implement more effectively its new roles and responsibilities as an independent legislative body.

The current five-year trial period is often mislabeled “Strong Mayor,” despite the fact that the governance model is actually a “**Strong Mayor-Strong Council**” form of government and the legislative and executive branches of government have equal power.

The City Council is the legislative branch which sets policy (subject to Mayoral veto) and provides oversight of mayoral implementation of policy once a law is passed. The City Council is also the branch of government best positioned to provide the public an opportunity to participate in their local government because they hold public hearings and communicate daily with the constituents.

The Mayor is the executive branch which implements the legislative policy set by City Council and proposes the annual budget. The Mayor’s veto authority is subject to a City Council override.

While much progress has been made in transitioning to the Strong Mayor-Strong Council form of government, more needs to be done. This includes the City Council repositioning itself to more effectively:

- initiate its own legislation,
- engage the public,
- exercise proper review and approval of budget decisions,
- provide effective oversight of the executive branch.

With a new City Council taking office on December 8, 2008 there exists a unique opportunity to change the way the legislative branch operates, both culturally and procedurally.

On June 9, 2008 Councilmember Donna Frye and Councilmember-Elect Carl DeMaio announced the launch of a joint study effort to assess the transition progress to date and offer recommendations for discussion as to how the City Council can make refinements in internal procedures and policies.

The study effort focused on council policies and procedures in four key areas:

- **Public Participation:** The City Council should truly be the “people’s body” in city government. As such, the City Council should strive to provide maximum access to the people to participate in their local government. The study examined ways to enhance public knowledge of planned Council actions as well as their ability to weigh in on key issues before Council. Topics included timing and location of City Council meetings, agenda and non-agenda public comment, and sunshine policies.
- **Budget and Legislative Processes:** If the City Council is to be a truly independent branch of government, it ought to play a greater role in the initiation and docketing of legislation. In addition, there have been a number of instances in recent years where

there has been great confusion over the legislative process—particularly as it concerns budgetary decisions (e.g. mid-year changes, impasse process, timing of budget decisions, etc.) The study examined how to redefine the manner in which ordinances and resolutions are introduced, managed, and considered. In addition, the study reviewed ideas for improving the integrity of the budget process.

- **Council Oversight:** As the people's body, the City Council has a duty to exercise appropriate oversight of the executive branch. To perform this role, the Council must also have access to timely and complete information from the executive branch. The study examined how to improve its oversight capabilities at the Committee level as well as define protocols for information requests from individual Council members.
- **Presiding Officers, Rules of Order and Committee Structure:** How the City Council uses its leadership positions, defines its rules for maintaining decorum, and structures its committees has a significant impact on the effectiveness of the body as a whole. The City Council should conduct its business with decorum at all times and the rules governing discussions should be predictable and enforced. The study examined the role and term of Council leadership positions, structure and issues handled by committees, and ways to enhance respect for basic parliamentary procedures.

Mrs. Frye and Mr. DeMaio held several "Town Hall Dialogues" over three months to seek public input and to educate the public on the current practices in the four topic areas above. In addition to sessions for the public, the two convened one-on-one meetings and a luncheon with experts in the fields of municipal budgeting, open government rules, and legislative process. They also sent memorandums to all City Councilmembers, the Mayor, the Independent Budget Analyst (IBA), City Attorney, City Clerk and all candidates for City Council seeking their input and participation.

This report provides **DRAFT** recommendations for the public (and current and prospective members of the City Council) to review and discuss.

A public hearing has been scheduled for October 30, 2008 to provide additional opportunity for the public, Councilmembers, Council candidates, Mayor, IBA, City Attorney and Clerk to offer feedback in an open setting. These recommendations are not the end of a process, they are the beginning of a discussion.

Public Participation

REFORM 1.1: Hold City Departments Accountable for Timely Disclosure of Documentation for the Council Docket

Overview of Issue:

Timely and complete access to all public documents relating to a pending municipal decision are the centerpiece of an open government. Providing the public with supporting docket documents allows for reasonable review and scrutiny of the data, information, and arguments being presented to councilmembers in support of or opposition to a decision. Unfortunately, there have been far too many instances where supporting information for a docket item has arrived late—preventing councilmembers and the general public from having an opportunity to adequately review the material *before* a decision is made.

In other cases, an item does not even make it on the docket because a city department has not yet provided supporting documentation. In some cases this has been due to workload factors or inability to generate information and data on time. In other cases there has been a concern that the failure to provide supporting documentation has been used as a pre-decisional veto on the legislative process. While input from the executive branch may be helpful to the legislative process, there should be a stronger mechanism in place to allow the City Council to proceed with the docketing of an item even if a city department has failed to provide input on the item.

Recommended Actions:

Automatic Continuance Rule: Amend the Permanent Rules of Council to require that any item that does not have complete documentation at least 24 business hours in advance of a meeting shall be subject to an automatic continuance to the following meeting. Any one Councilmember may raise a point of order on this issue and the Chair shall put the motion to proceed without timely providing documentation to a vote. The item may be heard as docketed only if five (5) votes of the City Council concur.

This change shall *not* effect any other rule that requires a longer review period.

Legislative Privilege Rule: Amend the Permanent Rules of Council to allow any City Councilmember to request that the City Council docket an item for a future meeting even if a city department has failed to provide input in a timely manner for the item. (See Reform 2.2 for specific mechanism for making the motion to consider.)

Opinions by City Attorney: Require that the City Attorney opinions be received at the same time as all other docketing materials. Should the City Attorney fail to provide materials on time, the City Clerk shall still docket the item, but request the action be to provide authorization for the Clerk to seek outside legal counsel to provide the necessary legal analysis. Any costs associated with this move shall be debited mid-year from the budget of the City Attorney.

REFORM 1.2: Expand Use of Evening and District Meetings

Overview of Issue:

The City Council currently holds its meetings Monday and Tuesday during business hours—and almost always at City Hall in downtown. Working families often find it hard to take off work to attend a hearing on an item of importance to them. While there is a provision in the current rules for community and evening meetings, this provision could be better utilized.

Recommended Actions:

Provision for Evening Meetings: Amend the Permanent Rules of Council to require one evening meeting per month—usually to be held on the first Monday of every month. The evening meeting would begin Monday at 4:30pm and run until no later than 9:00pm.

Provision for Community Meetings: Amend the Permanent Rules of Council to require that the City Council or a City Council Committee convene in the community at least once every quarter. The Clerk will be requested to identify in advance four suitable community meeting locations which include access for persons with disabilities, adequate parking, and proper security protocols. In addition, at the request of any one Councilmember and the concurrence of either the Council President or Council President Pro Tem, the Rules should allow for the City Council to convene closer to or within a community that is particularly impacted or interested in a controversial issue on the docket.

REFORM 1.3: Improve Time Management of the Docket

Overview of Issue:

A well-run City Council meeting should respect the time of the public by setting and sticking to a reliable schedule for consideration of items on the docket. In addition to respecting the public, better time management will save taxpayer dollars as city staff will not have to wait around at the City Council for their item to be considered and can instead get back to their duties of providing services to residents.

Recommended Actions:

Docket Schedule to Include Timeslots: Working with the Office of the Mayor, Council President and Council President Pro Tem, the Clerk will publish a docket that groups docket items in hourly increments—taking into account anticipated levels of public and councilmember interest in each docket item.

Revised Docket Schedule Based on Public Testimony Requests: At the beginning of each meeting, the Clerk will advise the Council and the public whether any adjustments need to be made in the timeslot-based schedule for consideration of docket items—based on requests received by the public to testify on an item.

Should the Clerk receive public speaking slips that would exceed the allocated time on public testimony, the Clerk will advise the Council which docket items exceed the time limits. Upon a motion by a Councilmember and six affirmative votes, the City Council may waive the Permanent Rules of Council for any item and specify the amount of additional time to be provided for a docket item. If additional time is approved, the Clerk would shift the Docket Schedule accordingly and post a revised schedule in the Council Chambers and online.

REFORM 1.4: Improve Use of City TV

Overview of Issue:

City TV is an important resource that city officials can use to keep the public informed on issues facing the community and possible solutions and services available. The Office of the Mayor currently controls the scheduling and use of City TV. While there is a policy governing content suitable for City TV, at present there is no clear policy for ensuring equal access to City TV for the legislative branch—raising concerns about the City Council's ability to effectively and equally use this important public information resource.

Recommended Actions:

Amend City TV Policy Guide: Require that a clear process for prioritization of requests for use of City TV be established, with an “equal time” provision and “first come, first served” rule for resolving disputes on coverage of events.

Provide Coverage of Independent City Agencies: The meetings of the boards for the independent city agencies (SEDC, CCDC, Housing Commission, etc.) should be televised.

REFORM 1.5: Request Monthly Public Comment & Question Session with the Mayor

Overview of Issue:

Under the Strong Mayor-Strong Council form of governance the Mayor no longer chairs, nor regularly attends City Council meetings. Therefore, some have argued that the public has limited access or opportunity to bring their issues directly before the Mayor—as they did under the Manager-Council form of government.

Recommended Action:

Mayoral Question and Comment Session: Amend the Permanent Rules of Council to include a monthly sixty minute “Question and Comment” Session with the Mayor—ideally during the monthly evening meeting. Thirty minutes would be allocated to the public with thirty minutes allocated to the City Council.

BUDGET & LEGISLATIVE PROCESSES

REFORM 2.1: Adopt Performance-based Budgeting Ordinance

Overview of Issue:

City taxpayers deserve to know what service levels they receive for their tax dollars. Cities and counties across the country have embraced the concept of “performance budgeting” whereby the budget process begins with the definition of performance results and the executive and legislature work to align available resources with those results. Once a budget is adopted the executive branch is given flexibility to manage resources throughout the year—provided that those results are achieved. Enhanced performance measures would be put in place to help define results and track results throughout the year in a transparent way—to the legislature as well as to the general public.

In recent years there have been concerns that there is not enough focus on using performance measures to define service levels—and that mid-year budget changes have adversely impacted service levels without the legislature or the public knowing in advance.

Recommended Actions:

The City Council should reform the city’s budget process to require the following:

Annual Performance Plan: The Mayor should submit an annual performance plan to the City Council no later than January 15 of each year that includes measurable outcome goals and measures for each city department. A listing of major services by program area in each department—complete with workload/output measures—should also be included.

No later than February 1, the City Council shall adopt a performance plan by ordinance and the Mayor shall prepare and submit a budget that reflects the resources required to each the level of performance expected from each city department. As decisions are made on resources throughout the budget process, the Mayor shall advise the City Council on the impact on performance expectations for each city department. All changes in performance measures and targets shall be included in the annual budget ordinance passed by the City Council.

Post Quarterly Performance Updates Online: The ordinance should include a requirement that each city department post its performance measures online with quarterly updates for the public to track the city’s progress.

NOTE: In the “Statement of Budgetary Principles” included in the FY 2009 Appropriations Ordinance, the City Council has outlined a process for the Mayor to use in making mid-year spending reductions. The process includes the requirement to inform the City Council in advance of significant reductions being made, and establishes dollar thresholds that would trigger a requirement to seek Council approval for mid-year budget cuts. While we are still concerned this process may allow for abuse, the performance budgeting reforms above should provide greater transparency on the impact to service levels of any mid-year budget cuts. We ask that the Budget Committee continue to provide aggressive oversight of mid-year budget cuts to ensure conformance with the process outlined in the “Statement of Budgetary Principles.”

REFORM 2.2: Expand Access to the Docket

Overview of Issue:

In some legislatures the minority's access to the docket has been denied by the majority. In a truly open government, access to the City Council docket is a fundamental right of every city councilmember. Docket access allows a councilmember to put a legislative idea before the full council for open discussion in public and a call for a recorded vote. There have been instances where access to the docket has been denied or manipulated to prevent the consideration of an issue—or the timely voting on an issue—by the full City Council.

Recommended Actions:

Transfer Staffing for Docket Management to the Clerk's Office: Staff support for docket management is both an art and a science—taking time to learn. Changing docket staff every year with the election of a new Council President weakens the docket management process. To depoliticize and to professionalize docket management, the responsibility for staff support for the docket will be transferred from the Council President's office to the Office of the Clerk.

Streamlined Docketing Process: Amend the Permanent Rules of Council to establish a streamlined process for docketing items that provides for the following:

Step 1 – Initiation: A Councilmember can introduce legislation by submitting it to the Office of the Clerk. The Mayor may also submit items to the Clerk's Office. Upon introduction the Clerk shall refer the item to the appropriate Council Committee and the Council President for review and consideration.

Step 2 – Committee Consideration: The item shall be reviewed by the appropriate Council Committee and, subject to the determination of the Chair, a hearing may be called on the item. Any item passed by the Committee shall be docketed for full Council consideration within 30 days—unless the Chair of the Committee requests the Clerk set an alternative timeline for scheduling the item.

Step 3 – Docketing at Full Council: The Clerk will prepare a draft docket for each meeting based on the following:

- Items submitted jointly by the Council President and Council President Pro Tem (this would bypass the Council Committee structure)
- Items passed by City Council Committees
- Any item that is requested by two city council members in writing. Items docketed using this method shall be guaranteed consideration at full Council within 45 days of the request (not counting legislative recess weeks)—unless the requesting members request an alternative timeline with the Clerk.

Step 4 – Prioritization Process: Some weeks will see docket requests exceed docket capacity. In this case the Clerk shall take a first come, first served approach to docketing items.

The Council President and Council President Pro Tem must jointly agree to modify the docket as submitted by the Clerk to add items that were not included by the Clerk due to time constraints. Any items that are trailed due to this provision must be given priority for the very next docket. A standing agenda item shall be added to each

Council agenda on “Items for Future Dockets” that would allow for the discussion of any items submitted to the Clerk’s Office—as well as listing any items that have been bypassed due to the prioritization process outlined in this step.

Step 5 – Motion at Full Council: At the beginning of a meeting, a Councilmember may make any of the following motions:

- **Point of Order:** A Councilmember may bring attention to items that are awaiting action by the full Council but not yet docketed due to lack of supporting documentation from the executive branch or city attorney’s office or absence from the docket due to a failure to conform with the rules for docketing outlined above.
- **Motion to Docket in Future:** A Councilmember may make a motion to instruct the Clerk to docket an item for a future meeting. Should such a motion receive five affirmative votes, the item shall be considered at the next regular meeting of the City Council unless the motion included an alternative date for consideration.

REFORM 2.3: Clarify Rules for Impasse Procedure

Overview of Issue:

The Impasse Procedure is used labor negotiations to determine when management and the bargaining units have failed to reach an agreement. It is used to force a resolution on disputed issues—sometimes through the imposition of contract terms on the union. In the transition to the Strong Mayor-Strong Council form of government the City’s procedure for declaring and settling an impasse was not revised. Significant confusion has occurred during each of the impasse hearings on what the proper procedure should be—and recent legal decisions relating to the City’s handling of impasse have indicated a clear policy needs to be established.

Recommended Actions:

Adopt Revised Impasse Procedure: Subject to meet and confer with the employee unions, the city should adopt an impasse procedure that permits the City Council to either adopt the last, best & final offer of the Mayor or the last, best & final offer of the bargaining unit. Failure to adopt either would result in the continuation of the previous year’s contract.

COUNCIL OVERSIGHT

REFORM 3.1: Create an “Oversight Provisions” in the Appropriations Ordinance

Overview of Issue:

The Appropriations Ordinance is one of the most important tools the City Council has to exercise authority to enforce legislative intent as the executive branch implements city laws and programs. For example, recently there were concerns that the executive branch failed to implement in a timely manner the water recycling ordinance passed by the City Council. There have also been cases where information has not been forthcoming from city agencies when requested by a council committee or councilmember.

Borrowing from the federal appropriations process, the City Council can give an issue more importance if it links timely implementation of a policy or provision of information to the city department's authority to make expenditures.

Recommended Actions:

Oversight Provisions List: The City Council will provide a list of actions that a city department in their jurisdiction should be prepared to carry-out in exchange for authority to spend their appropriation in a specific budget account. Items would be limited solely to issues and policy already defined in municipal law—but await proper implementation by the executive branch. At the initial introduction of the annual Appropriations Ordinance, the Oversight Provisions list will be offered as an amendment to the ordinance and put to a vote of the City Council.

REFORM 3.2: Enhance Council Oversight of Independent Agencies

Overview of Issue:

As recent events with the South Eastern Development Corporation and the Centre City Development Corporation illustrate, the City Council needs to be more active in overseeing the activities of so-called independent agencies of the city.

Recommended Actions:

Oversight Hearing with Boards: Require that the Council committees hold an oversight hearing at least every six months with the boards of any independent agency that falls under their jurisdiction. The purpose of the hearing would be to receive a status report from the board on the financial, policy, and operational condition of the independent agency and take direction from the City Council committee on future direction. In addition, the financial and performance audit of the independent agency would be the subject of a separate oversight hearing with the independent agency at least once per year.

Appointment and Removal of Chief Executives: Amend the operating agreements of the independent agencies to require that the Chief Executive of the agency is appointed and removed by the City Council.

SDCERS Appearances: Require that the SDCERS Chief Executive attend City Council hearings on the city's financial audits, financial disclosures, possible pension changes, and budget deliberations when requested by any one member of the City Council.

Closed Session Reform: Require SEDC, CCDC and the Housing Commission to follow the same closed session rules as the City Council.

REFORM 3.3: Enhance Oversight of City Contracting

Overview of Issue:

The City of San Diego contracts out many of its services, however, it is difficult for the public and Council to ensure that the contract requirements are being followed and that taxpayer dollars are being properly spent. The municipal code limits the executive branch's ability to award a contract without City Council approval—requiring all contracts worth more than \$250,000 to be voted by Council prior to their award. Unfortunately, there have been several cases where the executive branch has exceeded this cap by virtue of awarding a smaller contract that morphs into a larger undertaking as the contract is implemented.

Recommended Actions:

Contract Transparency: Require that all city contracts in excess of \$25,000 be posted online on the city's website, and any contractor that has received in excess of \$25,000 cumulative from the city also be posted with links to all contracts awarded to that contractor. This transparency will provide the City Council and public with advance notice of contracts that contain scopes of work that may eventually trigger the threshold for City Council approval.

Penalty for Exceeding Authority: Should a city department exceed contract authority and require the City Council to approve a contract post-award, the City Council will debit the offsetting difference from the personal budget for the Office of the Mayor.

Public Records Act Requests: Amend the Municipal Code to make city contractors subject to the same document disclosure requirements as government. (Mrs. Frye supports this recommendation; Mr. DeMaio would like to propose a more narrow scope of disclosure.)

REFORM 3.4: Include Councilmember Attendance at Disclosure Practices Working Group

Overview of Issue:

The Municipal Code does not expressly allow City Councilmembers or their staff to attend meetings of the DPWG. Given that it is the Councilmembers who must sign off on financial documents, it makes sense that Councilmembers or their staff are allowed to attend.

Recommended Action:

Amend the Municipal Code to allow Councilmembers or their staff to attend the meetings of the DPWG. To ensure no violation of the Brown Act occurs, Councilmembers wishing to attend should inform the Chair of the DPWG in advance.

Presiding Officer, Rules of Order & Committee Structure

REFORM 4.1: Clarify Rules for Election of Council Leadership

Overview of Issue:

Some of the outgoing City Councilmembers have suggested that they—not the new City Councilmembers—should select the leadership for the new City Council. This would be tantamount to the House Republicans losing the 2006 election only to reconvene in Washington to elect the Speaker for the next Congress early—selecting a Republican instead of a Democrat. Outgoing members should not impose their leadership choice on the incoming members. Moreover the city's Municipal Code only states that the election of Council leadership shall occur by the first week in January.

Recommended Action:

Amend the municipal code to clarify that the election of the Council President and President Pro Tem shall occur at the first meeting in December *after* the new Councilmembers are sworn in. The Clerk shall call the first meeting to order, with the first order of business being the election of City Council leadership.

REFORM 4.2: Professionalize Docket Management

Overview of Issue:

Managing the docket should not be a political process and the staff position devoted to docket management should not change every year with the change in Council Presidency. It can take months for a new staff member to learn the art of effective docket management.

Recommended Action:

Amend the Permanent Rules of Council and task the Office of the Clerk with staffing the docket.

REFORM 4.3: Create a Parliamentarian

Overview of Issue:

The City Council should adhere to its Rules of Order and maintain a more professional and respectful environment during its meetings. The County Board of Supervisors has designated the Clerk of the Board as its Parliamentarian—a role that actively guides debate at the Board.

Recommended Actions:

Designate the Clerk as the Parliamentarian: Amend the Permanent Rules of Council to make rulings on points of order subject to the advice of the Parliamentarian and a ruling by the Chair. When sitting at Council, the City Clerk would sit as the Parliamentarian. This role is modeled

after the County Board of Supervisors—who consults closely with the County Counsel on any parliamentary issues that may also relate to legal matters. The Parliamentarian would also take a more active role in facilitating discussion and managing public testimony.

REFORM 4.4: Restructure Council Committees

Overview of Issue:

The City Council committee structure has evolved over the years—sometimes with little strategic intent. For example the Rules Committee was used by the Mayor in the City Manager form of government to set a policy agenda and control the docket. It recently has become a grab-bag of issues—ranging from installing AED machines throughout the city (arguably an issue for the Public Safety and Neighborhood Services Committee) to hearing an update on the SEDC and CCDC redevelopment agencies (arguably an issue for the Land Use and Housing Committee).

A well-defined committee structure can improve focus on policy development, enhance oversight of the executive branch, and empower individual Councilmembers to take more pro-active issue leadership roles.

Recommended Actions:

No specific recommended committee structure. We leave this as an open item for discussion.